IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7691 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHASHIKANT G PATEL

Versus

DIRECTOR,

Appearance:

1. Special Civil Application No. 7691 of 1989

MS SANGEETA PAHWA FOR MR PM THAKKAR for Petitioners No.1-2

MR JR NANAVATI for Respondent No. 1

RULE SERVED for Respondent No. 2

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 27/02/2002

ORAL JUDGEMENT

#. Heard Ms.Sangeeta Pahwa, learned advcoate appearing on behalf of the petitioner and Mr.J.R.Nanavati, learned advocate appearing on behalf of the respondent No.1.

Though notice of Rule has been served on the respondent No.2, none remained present on behalf of the respondent No.2.

#. In the present petition, the grievance made by the petitioners that the petitioner No.1 was appointed as a daily wager on 24th June, 1980 as Library Attendant in the Library of the respondents, similarly the petitioner No.2 was appointed on 4th February, 1984 as Library Attendant on daily wages basis and accordingly though they are working for more than nine years and five years as daily wager respectively but the respondents have not regularised the services of the petitioners along with similarly situated persons. According to the petitioners, on 21st May, 1988, the respondents called for the names from the employment exchange and also from the departmental Heads of the University under whom daily wagers like the petitioners were working. The petitioners also pointed out that the post of Library Attendants are also vacant and the required eligibility for the posts in question is to the effect that a person should be between the age of 18 to 25 years, S.S.C. passed, knowing English and also having two years experience of Library work. According to the petitioners, they are full eligible and qualified for the post of Library Attendant and they received interview call letters on 28th October, 1988 from respondent University. The petitioners also pointed out that they appeared in the interview which included written test and also the oral test on the scheduled date and time. It is also submitted that in said interview, in all eight person had appeared and out of eight candidates who competed for the post in question, three persons were to be selected since there were three vacant posts of Library Attendants. It is also case of the petitioners that to their best knowledge, they have been selected along with one other person in the month of November, 1988 but appointment orders were not issued by the respondents despite of the fact that they were selected and three posts of Library Attendants were permanently sanctioned and still vacant and in the said posts, the petitioners are working since many years. It is further pointed out that since the petitioners did not receive appointment order, they made representation on 28th April, 1989 to the University as also to the Minister concerned. But as such, there was no response given by the respondent University. Therefore, main grievance made in the present petition is that though the petitioners have been duly selected for the post of Library Attendants, no appointment orders have been given by the respondent University and therefore, this

petition.

#. This Court while dealing with this petition at initial stage, issued RULE and also ordered to hear this matter along with Special Civil Application No.7357/88, however, no interim relief was granted on 19th February, 1990. Thereafter, on 6th April, 1990 this Court has passed order, which runs as under :-

"Considering the facts stated in the petition which are not denied in the affidavit-in-reply, till further orders respondents are directed to appoint the petitioners in the pay scale of Rs.750-940/- on the basis of the interview and selection of the petitioner by the respondents. However, appointments would be subject to the result of this petition."

#. Pursuant to the aforesaid interim order passed by this Court on 6th April, 1990, both the petitioners have been appointed by order dated 10th September, 1990 against vacant post of the Library Attendant. According to submissions of learned advocate Ms.Sangeeta Pahwa that from that both the petitioners are working in the said posts regularly. The respondent University has filed affidavit-in-reply. The respondent University has raised contention in para-2.1 that pursuant to the order dated 6th April, 1990 passed by this Court, the petitioner No.1 has been appointed by the order of the Director of Campus, Junagadh dated 10th September, 1990 as a Library Attendant in the pay scale of Rs.750-940/- on certain terms and conditions mentioned in the said order and the petitioner No.2 has been appointed as a Library Attendant by order dated 10th September, 1990 in the pay scale of Rs.750-940/- on the certain terms and conditions mentioned in the said order. It is also pointed out that said appointment orders are subject to the result of this petition. It is also pointed out that as per the letter dated 21st May, 1988, a list of candidates for Class-III and IV was asked for from the District Employment Officer and also from Social Welfare Department as well as from various departments of the University. However, it is admitted by the respondents that the respondent No.2 forwarded the names of the University employees which included the petitioners by letter dated 27th May, 1988 and the petitioners are shown at Sr.No.1 & 3 in the said letter. However, it is contended that the petitioners were not selected along with the other persons in the month of November, 1988 as alleged but according to the respondent, the Selection Committee met on 4th, 5th and 6th November, 1988 at the office of the Director of

Campus, Gujarat Agricultural University, Junagadh for selection of the candidates in respect of eleven posts which included the post of the Library Attendant. It is pointed out that the Selection Committee had made following report in respect of the post of the Library Attendant.

"In this cadre, no candidate was found suitable, the selection committee does not recommend any candidates for the above post. The post may therefore be readvertised accordingly."

Therefore, according to respondent, the Selection Committee has not recommended any name for the post of Library Attendant and the petitioners were also not recommended by the Selection Committee in respect of the post of Library Attendant and therefore, the petitioners cannot rely on the report of the selection committee. The petitioners are, as a matter of right, not entitled to the posts in question. However, appointment orders has been issued in favour of the petitioners in pursuance of the order date 6th April, 1990 passed by this Court. It is also submitted by Mr.J.R.Nanavati that initially the grant for the post in question was available but from 1996, grant was not available and therefore, salary has been made from another budget head viz. Research Scientist "Bajara" and Research Scientist Agriculture and the petitioners were required to be continued because of the interim order passed by this Court. However, it is pertinent to note that no rejoinder has been filed by the petitioners.

#. Ms.Sangeeta Pahwa, learned advocate for petitioners has submitted that the petitioners are qualified for the post of Library Attendant and this fact has not been disputed by the respondent. The only question is that according to the respondent Selection Committee has not recommended the names of the petitioners. However, by way of interim order passed by this Court on 6th April, 1990, this Court has directed the respondent to appoint the petitioners in the post of Library Attendant and from that onwards, the petitioners are working on the post in question. According to the petitioners, they were selected because they were qualified for the post of Library Attendant and there is nothing adverse against the petitioners since 6th April, 1990 nor any such adverse has been pointed out by the respondent against the petitioners. It is also submitted that as such, there is no complaint nor any such averments are made out in the affidavit in reply by the respondent University. Therefore, they are working satisfactorily and their work

is found to be satisfactory. There is no adverse report by the respondent University. Therefore, she submitted that by now more than 10 years service have been rendered by the petitioners and as such, no complaint against the petitioners and therefore, the interim order passed by this Court may be confirmed as final order, otherwise, after having been put in services of these many years, if the petitioners are left to face competition, they will be never be able to compete in the open competition. Moreover, the petitioners have responsibility of their family and other social responsibility. Therefore, in such situation, when there is nothing against the petitioners, they should be continued as permanent employee with the respondent University.

#. Learned Advocate Mr.J.R.Nanavati has submitted that as such, the petitioners are, as a matter of right, not entitled to be continued in the post in question, as their selection was not recommended by the Selection Committee. But because of the interim order, they are continued by order dated 6th April, 1990. It is also his submissions that from 1st March, 1996, the salary are debited from other budgetary head and therefore, if they will be continued furthermore, there will be financial burden on the respondent University and hence, this petition may be rejected.

#. I have considered the rival submissions made by the learned advocates for the parties. It is necessary to note that both these petitioners were initially working as daily wager. The petitioner No.1 has been working for more than nine years, who was working prior to 1990, whereas the petitioner No.2 was in service for more than five years. Therefore, it has come on record that the petitioner have put in long tenure of service say about 20 years by the petitioner No.1 and 16 years services by the petitioner No.2 with the University. Now, after these many years, if the petitioners are directed not to be continued in service with the University, there will be great hardships and inconvenience to the petitioners and their families. This aspect and issue has been examined by the Apex Court in a cases more than one in number. In case of H.C.PUTTASWAMY AND OTHER V. THE HON'BLE THE CHIEF JUSTICE OF KARNATAKA HIGH COURT reported in AIR 1991 SC 295. The facts of aforesaid case reveals that appointments made by the Chief Justice of High Court of Karnataka in contravention of provisions of Karnataka Civil Services [Ministerial Posts] Recruitment Rules, 1977 under which the powers to make selection was required to stage to appear for written test followed by interview. The Apex Court in this case

observed that;

"there is imperative need for total and absolute administrative independence of the High Court. But the Chief Justice or any other Administrative Judge is not an absolute ruler. Nor he is a free wheeler. He must operate in the clean world of law, not in the neighborhood of sordid atmosphere. He has a duty to ensure that in carrying out the administrative functions, he is actuated by same principles and values as those of the Court he is serving. He cannot depart from and must remain committed to the constitutional ethos and traditions of his calling. Thus where the Chief Justice of the High Court had disregarded the authority of the Public Service Commission under Rulers to make selection of the candidates for appointment to posts of clerk in subordinate courts and bypassed the power of the District Judge to make appointment and he took upon himself the power of both the authorities of making selection as well as appointment in the establishments of the Subordinate Courts, the methodology adopted by the Chief Justice was manifestly wrong and it was doubtless deviation from the course of law which the High Court has to protect and preserve. All such persons appointed by Chief Justice are in service for the past 10 years. They are either graduates or double graduates or post graduates as against the minimum qualification of S.S.L.C. required for Second Division Clerks in which cadre they are originally recruited. Some of them have earned higher qualification by hard work during their service. Some of them in the normal course have been promoted to higher cadre. They are now overaged for entry into any other service. Most of them cannot get the benefit of age relaxation under R.6 of the Karnataka Civil Services [General Recruitment] Rules, 1977. Therefore they could not be asked at such stage to appear for written test and viva voce to be conducted by the Public Service Commission for fresh selection. Therefore on humanitarian ground all the appointees are directed to be treated as regularly appointed with all benefit of past service."

#. This Court is also aware of the decision of the Apex Court in case of BALESHWAR DASS AND OTHERS V. STATE OF UP AND OTHER reported in AIR 1981 SC 41, wherein, the

Apex Court has observed that "if, in the normal course, a post is temporary in the real sense and the appointee knows that his tenure cannot exceed the post in longevity, there cannot be anything unfair or capricious in clothing him with no rights. Not, so, if the post is, for certain departmental or like purposes, be declared temporary, but it is within the ken of both the Government and the appointee that the temporary posts are virtually long lived". The Apex Court further observed in para 26, "that is to say, although they are temporary appointees, if their probation is completed and other formalities fulfilled, they become members of the Service. It follows that merely because the person is a temporary appointee it cannot be said that he is not substantively appointed if he fulfils the necessary conditions for regular appointment such as probation and consultation with the Public Service Commission etc."

#. Similar issue was dealt with by the Apex Court in case of SMT VIJAY GOEL VS. UNION OF INDIA AND OTHER reported in AIR 1998 SC pg.101. I would like to quote relevant observations made in para-12 as under :-

"12. Be that as it may. The question that arises for our consideration is : if the appellants were appointed on ad hoc basis form the start and if not were the orders regularising their services necessary. We have seen that recruitment to the LDCs in the hospital is governed by the statutory rules framed by the Central Government under proviso to Article 309 of the Constitution. It is nobody's case the appellants did not fulfil the requisite qualifications or that they did not qualify the typing test with the sped 30 w.p.m. as required by the rules. It is also not disputed that the appellants were selected after they had undergone the process of selection by the Selection Board. It is correct that by subsequent Government Resolution the test was to be conducted by SSC and so also selection for appointment to the post of LDC. We need not go into the question if in the existence of the statutory rules could they be amended to the extent that certain functions were left to be performed by SSC and not by the DPC. It is not that the SSC could prescribe any qualifications different than that prescribed in the recruitment rules for appointment to the post of LDCs. The fact, however, remains that when the hospital authorities approached the SSC it expressed its inability to conduct the test and

> select candidates for appointment to the post of LDCs in the hospital and rather told them that the authorities could themselves make arrangement to fill up the vacancies through other authorised channels if it was urgent. SSC did not say that the authorities could fill up the vacancies on adhoc basis only till such time candidates sponsored by SSC were made available to the hospital. In pursuance to the communication received fromt he SSC were made available to the hospital. In pursuance to the communication received from the SSC the hospital authorities asked the local employment exchange to sponsor candidates and at the same time issued a circular allowing the eligible departmental candidates to apply for the post of LDCs. Posts were in existence. The authorities fell back on the recruitment rules, conducted the examination, found the appellants to fulfil the qualifications and then selected them by duly constituted DPC. The respondents have neither stated nor contradicted that the selection of the appellants was not in conformity with the recruitment rules. That being so we fail to see why the order of May 19, 1985, regularising the services of ad hoc LDCs including the petitioners should have been cancelled on technical grounds five years after they had been regularised and absorbed in the cadre."

##. Considering the observations of the Apex Court in abovereferred three decisions and considering the basic facts of the case that more than ten years, both the petitioners have been working satisfactorily. There is nothing adverse pointed out by the respondents. The petitioners possessing requisite qualification for the post of Library Assistant and this aspect has not been disputed by the respondent, therefore, according to my opinion, interim order which has been passed by this Court on 6th April, 1990 requires to be confirmed as final order so that the petitioners shall remain continued in the post in question as per the order dated 10th April, 1990. It is also necessary to note that both these petitioners were working even before they appointed on 10th September, 1990 against the vacant post of Library Assistant and this aspect has also not been disputed by the respondent and ultimately, they remained continued in the said post. Therefore, considering all these aspects of the matter and the peculiar facts and circumstances of the case, in the interest of justice, this Court is inclined to take sympathetic view in the

matter and accordingly, the interim order passed by this Court on 6th April, 1990 is hereby ordered to be final order. Rule is made absolute to the extent indicated hereinabove. No order as to costs.

Date : 27-2-2002 [H.K.Rathod, J.]

#kailash#